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11 INTUITIVE SURGICAL, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ILLINOIS UNION INSURANCE COMPANY, an
16 Illinois corporation,

17 Plaintiff,

18 v.

19 INTUITIVE SURGICAL, INC., a Delaware
20 corporation,

21 Defendant.

CASE NO.: 3:13-CV-04863-JST

**JOINT STIPULATION RE: *BRANDT*
FEES ALLOCATION AND AWARD;
and**

~~PROPOSED~~ ORDER.

Complaint Filed: October 21, 2013
Judge: Honorable Jon S. Tigar
Trial Date: June 19, 2017

22 INTUITIVE SURGICAL, INC.,

23 Plaintiff,

24 v.

25 ILLINOIS UNION INSURANCE COMPANY, an
26 Illinois Corporation; NAVIGATORS SPECIALTY
27 INSURANCE CO., a New York Corporation,

28 Defendants.

CASE NO. 3:15-cv-04834-JST

Complaint Filed: October 20, 2015

1 Intuitive Surgical, Inc. (“Intuitive”) and Illinois Union Insurance Company (“Illinois Union”)
2 jointly stipulate, pursuant to Civil Local Rules 6-1(b), 6-2, and 7-12, that, (1) in the event Intuitive
3 prevails on its bad faith claim, the Court will determine the amount of attorney fees to which
4 Intuitive is entitled under *Brandt v. Superior Court* (“*Brandt*”), 37 Cal. 3d 813 (1985),
5 (2) documents related to *Brandt* fees shall be produced after trial, and (3) the parties will jointly
6 propose deadlines relating to any allocation and award of *Brandt* fees after trial in this action
7 concludes.

8 WHEREAS, in *Brandt* the California Supreme Court held that “when an insurance company
9 withholds policy benefits in bad faith, attorney fees reasonably incurred to compel payment of the
10 benefits are recoverable as an element of the plaintiff’s damages.” *Nickerson v. Stonebridge Life*
11 *Ins. Co.*, 63 Cal. 4th 363, 373 (2016) (citing *Brandt*, 37 Cal. 3d at 819);

12 WHEREAS, in *Brandt*, the California Supreme Court went on to hold:

13 Since the attorney’s fees are recoverable as damages, the
14 determination of the recoverable fees must be made by the trier of fact
15 unless the parties stipulate otherwise. A stipulation for a postjudgment
16 allocation and award by the trial court would normally be preferable
17 since the determination then would be made after completion of the
legal services, and proof that otherwise would have been presented to
the jury could be simplified because of the court’s expertise in
evaluating legal services.

18 *Id.* at 819-20 (internal citations omitted); *see also Nickerson*, 63 Cal. 4th at 373 (“Consistent with
19 that suggestion the trial court in this case accepted the parties’ pretrial stipulation that if [plaintiff]
20 were to succeed on his bad faith claim against [defendant], the court would determine the amount of
21 attorney fees to which [plaintiff] was entitled under *Brandt*.”);

22 WHEREAS, Intuitive is seeking *Brandt* fees in connection with its implied covenant of good
23 faith and fair dealing claim against Illinois Union;

24 WHEREAS, the deadline for all fact discovery was initially set for November 10, 2016 (Dkt.
25 186); and

26 WHEREAS, the parties then stipulated, and the Court subsequently ordered, that to the extent
27 Intuitive produces any evidence supporting *Brandt* fees, including legal bills, invoices, or receipts,
28 such evidence need not be produced until May 19, 2017 (30 days before trial) (Dkts. 197, 198).

- 1 NOW THEREFORE, the parties, through the undersigned counsel, hereby stipulate that:
- 2 • in the event that Intuitive succeeds on its bad faith claim at trial, the Court will
- 3 determine a postjudgment allocation and award of recoverable fees to which Intuitive
- 4 is entitled under *Brandt*;
- 5 • within 20 days after a verdict in the jury trial in this action, the parties will (1) meet
- 6 and confer, and (2) jointly propose to the Court expert disclosure deadlines and a
- 7 briefing schedule relating to the *Brandt* fee issue; and
- 8 • the May 19, 2017 deadline for the production of evidence supporting *Brandt* fees is
- 9 extended until 30 days after a verdict in the jury trial in this action.

10 The parties' proposed time modifications would impact the deadlines in Case No. 3:13-cv-

11 04863-JST as follows:

12

Event	Current Schedule	New Schedule
Parties to Jointly Propose to the Court Expert Disclosure Deadlines and a Briefing Schedule Relating to <i>Brandt</i> Fees	N/A	20 days after a verdict in the jury trial
Deadline to Produce Evidence Supporting <i>Brandt</i> Fees	5/19/2017	30 days after a verdict in the jury trial

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18 DATED: May 5, 2017

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

20 By: /s/ Allen Ruby

21 Attorneys for Plaintiff

INTUITIVE SURGICAL, INC.

22 DATED: May 5, 2017

COZEN O'CONNER

23 By: /s/ Charlie Wheeler

24 Attorneys for Defendant

ILLINOIS UNION INSURANCE COMPANY

25

26 Pursuant to Civil Local Rule 5-1(i), the filer attests that concurrence in the filing of this

27 document has been obtained from the signatories above.

28 /s/ Allen Ruby

~~[PROPOSED]~~ ORDER

**PURSUANT TO THE FOREGOING STIPULATION OF THE PARTIES, IT IS
ORDERED THAT:**

(1) In the event that Intuitive succeeds on its bad faith claim at trial, the Court will determine a postjudgment allocation and award of recoverable fees to which Intuitive is entitled under *Brandt v. Superior Court* (“Brandt”), 37 Cal. 3d 813 (1985);

(2) The parties will meet and confer within 20 days after a verdict in the jury trial in this action and jointly propose to the Court expert disclosure deadlines and a briefing schedule relating to the *Brandt* fee issue; and


(3) The May 19, 2017 deadline for the production of evidence supporting *Brandt* fees is extended until 30 days after a verdict in the jury trial in this action.

The prior deadlines in Case No. 3:13-cv-04863-JST are amended as follows:

Event	Current Schedule	New Schedule
Parties to Jointly Propose to the Court Expert Disclosure Deadlines and a Briefing Schedule Relating to <i>Brandt</i> Fees	N/A	20 days after a verdict in the jury trial
Deadline to Produce Evidence Supporting <i>Brandt</i> Fees	5/19/2017	30 days after a verdict in the jury trial

DATED: May _21_, 2017

By: _____


The Honorable Jon S. Tigar
United States District Court Judge